



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,457	08/21/2003	Aurelian Bruneau	400-23244/PC771.00	7972
52196 7590 01/22/2007 KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709			EXAMINER PHILOGENE, PEDRO	
			ART UNIT 3733	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE			MAIL DATE	
3 MONTHS			01/22/2007	
			DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/645,457	<b>Applicant(s)</b> BRUNEAU ET AL.	
	<b>Examiner</b> Pedro Philogene	<b>Art Unit</b> 3733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 and 68-79 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 is/are allowed.
- 6) ☒ Claim(s) 68-70 and 74-76 is/are rejected.
- 7) ☒ Claim(s) 71-73, 77-79 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 68-70,74-76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brumfield et al (6,235,028) in view of Sevrain et al. (6,589,244).

With respect to claims 68 and 74, Brumfield et al disclose a device for guiding an implant to a location adjacent a bone anchor comprising: a guide member (12) including a connecting portion (16) and a guiding portion (14), wherein with the connecting portion adjacent the bone anchor said guiding portion extends proximally from the connecting portion and is adapted to receive the implant wherein the guiding portion is flexible and movable to any one of a plurality of orientations relative to the anchor as the implant is guided there along, the connecting portion includes a body comprising a tapered portion forming a substantially uniform transition between the anchor and the guiding portion; as set forth in column 3, lines 42-67, column 4, lines 1-6, lines 17-27, column 5, lines 16-61, column 10, lines 38-67, column 11, lines 9-38; and as best seen in FIGS.1-7.

With respect to claims 69,70,75,76, Brumfield et al disclose all the limitations, as set forth in column 3, lines 42-67, column 4, lines 1-6, lines 17-27, column 5, lines 16-61, column 10, lines 38-67, column 11, lines 9-38; and as best seen in FIGS.1-7.

Art Unit: 3733

It is noted that Brumfield et al did not teach of a connecting portion including a pair of extensions to releasably engage with the bone anchor; as claimed by applicant. However, in a similar art, Sevrain et al evidence the use of an insertion instrument with a pair of extension to releasably fasten and secure a fastener.

Therefore, given the teaching of Sevrain et al, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device of Brumfield et al, as taught by Sevrain et al to releasably fasten and secure an anchor.

***Allowable Subject Matter***

Claims 1-20 are allowed.

Claims 71-73,77-79 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Amendment***

Applicant's arguments filed 11/2/06 have been fully considered but they are not persuasive. Although applicant is arguing about the post projecting laterally and the distal extensions that are deflectable towards one another, nowhere is applicant claiming such limitations in claims 68 and 74. Therefore, the rejection of these claims with the above references is proper.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

Art Unit: 3733

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

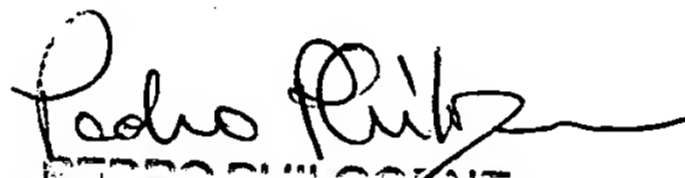
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (571) 272-4716. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272 - 4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Pedro Philogene  
January 11, 2007

  
PEDRO PHILOGENE  
UNITED STATES PATENT AND TRADEMARK OFFICE